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No. 82-1438

IN THE SUPREME COURT
OF THE
UNITED STATES

October Term, 1982

RICHARD WRIGHT, on behalf of himself and all others similarly situated,

Petitioner,

vs.

INTERNATIONAL BUSINESS MACHINES CORPORATION, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF ON BEHALF OF PETITIONER

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As permitted by Rule 22.5, Supreme Court Rules, petitioner files this Reply Brief to address matters first

raised in respondent's Brief in Opposition.

Respondent claims that "[p]etitioner's statement of the facts contains many assertions not supported by, or contrary to, the record." (Resp. Br., p. 1). For this claim, however, respondent makes only two showings:

1. An interchange between petitioner's expert, petitioner's counsel, and the court at page 1076 and a hearsay statment at page 1203, of the Reporter's Transcript (Resp. Br. pp. 2 and 3); and

2. A conclusion drawn by the Court of Appeals characterizing the relationship between education and salary shown by respondent's statistics otherwise than as petitioner has characterized it and otherwise than as respondent's expert has done so. (Resp. Br. p. 2, quoting the Court of Appeals' decision at Pet. Appx., p. 12a).

I

CONTRARY TO THE STATEMENTS ON BEHALF OF PETITIONER, ON WHICH RESPONDENT RELIES, ITS OWN ELABORATE PROOF ESTABLISHES A DIRECT AND STATISTICALLY SIGNIFICANT CAUSAL RELATIONSHIP BETWEEN EDUCATIONAL DISADVANTAGE AND PAY DISADVANTAGE IN THE EMPLOYEE POPULATION AT ISSUE.

It is true that the statements respondent quotes were made at page 1076 of the Reporter's Transcript by petitioner's counsel, Mr. Moore, and his labor economist, Dr. Vencill. A similar statement was made at page 1203 by petitioner's statistician, Dr. Sperlich. A copy of these two pages of the transcript is set forth in Appendix A to this Brief.

However, no one of these statements purports to have been made as of the speaker's own knowledge. Each is a representation of what the speaker believed to have been another witness' conclusion drawn from a regression run done by the latter. Yet that other witness, Dr. Christopher Achen, later called as a rebuttal witness, was never asked this question.

By contrast, respondent's expert testified to a number

of regression runs he himself had done and to the conclusions he drew from them as to the role education played as a "pay determinant" in the common data base. (Reporter's Transcript, pp. 1464-67). He introduced Defendant's Exhibit 315-B to reflect the results of his principle regression analysis and it shows, consistently for each of the years 1972 through 1977, an increasingly large salary disadvantage associated with decreasing degrees of educational attainment. For each of these showings, the probability statistics are such as to reduce nearly to zero the possibility that these results could have been reached by chance.

In further studies to which respondent's expert testified, moreover, he reproduced the study done by petitioner's expert (showing race-based salary differences) and testified that he could explain essentially all of petitioner's findings by the addition of the factors of education and its partial surrogate, initial placement, as "pay determinants". (Reporter's Transcript, pp. 1481, 1490-92). Respondent's evidence left no room for doubt as to the statistically significant correlation between education and

pay. That evidence also established the correlation between educational disadvantage and race. See the District Court's Findings of Fact, Nos. 11015. (Pet. Appx. pp. 5s, 6a).

II.

THE COURT OF APPEALS' STATEMENT PURPORTING TO DISTINGUISH CORRELATION FROM CAUSATION, IN CHARACTERIZING THE EFFECT OF THIS STATISTICAL SHOWING IS CONTRARY TO THE TESTIMONY OF RESPONDENT'S EXPERT.

Respondent relies on the Court of Appeals' statement that, "[a] t most, [petitioner] was able to show a correlation between education and salary, not a causal link attributable to IBM's practices or policies." (Resp. Br. p. 2, quoting Pet. Appx., p. 12a). But both petitioner's and respondent's statistical experts testified here that their use of multiple regression analyses was for the purpose of moving beyond the description of simple correlations to the point of examining "the impact . . . of various factors" on the dependent variable, in this case salary, to "inspect their effects simultaneously." (Dr. Peter Sperlich, tesstifying at Reporter's Transcript, p. 1146). Respondent's expert, Dr. Welch, spoke of adding factors to increase "the efficiency

with which we measure some of the effects that we are adjusting for race differences." (Reporter's Transcript, p. 1453). He identified these factors as "determinants of salary", and "pay determinants". (Reporter's Transcript, p. 1154). It is, of course, true that a single correlation between two variables may be explained as either cause, or effect, or two concurrent effects of an independent cause or even as having occurred by chance. But the point of multiple regression analyses, such as both petitioner's and respondent's experts have done here, is as completely to include all significant, potential causes of the final outcome into the equation as to be able to explain the weight which any one of them has in influencing the outcome.

It is true that "the reliability of regression results as a basis for descriptive and causal inference can be no greater than the validity of the regression model which produced them." [1] But the regression model upon which petitioner

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1/. D. Baldus and J. Cole, Statistical Proof of Discrimination, (1980), § 8.021, p. 244.

here relies was produced by respondent's expert, for respondent's purposes, in order to prove precisely that role which education played in determining salary that petitioner now claims for it.

CONCLUSION

Petitioner has not misstated the facts which are discernible from the record. The petitioner should be granted for the reasons set forth in its statement of reasons. (Pet. pp. 8-17).

Respectfully submitted,

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April 15, 1983

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FINAL REGRESSION THAT WE ARE USING.

THE COURT: IS WAS NOT OR WAS?

THE WITNESS: BUT WE DID RUN THOSE VARIABLES, AND THE STATISTICIAN COULD TESTIFY ON THE RESULTS WE FOUND.

THE COURT: BUT WAS IT OR WAS IT NOT INCLUDED IN YOUR INITIAL ONE?

THE WITNESS: WE HAVE — I PROBABLY SHOULD MAKE IT COMPLETELY CLEAR. WE DO HAVE THE EQUATIONS. BUT I BELIEVE THAT THE EQUATIONS WE FINALLY AGREED WERE THE BEST EQUATIONS WERE THE ONES THAT DID NOT INCLUDE THE EDUCATIONAL VARIABLES.

THE COURT: I MISUNDERSTOOD.

THE WITNESS: YES.

MR. MOORE: YOUR HONOR, THE FACT OF THE MATTER IS THAT EDUCATION MADE NO SIGNIFICANT CONTRIBUTION.

MR. WALSH: IF YOUR HONOR PLEASE, I DON'T

KNOW THAT MR. MOORE SHOULD TESTIFY.

THE COURT: HE HASN'T GOT THAT YET.

ASK HIM.

DID IT -- WHEN YOU RAN WITH OR WITHOUT, DID YOU FIND ANY SERIOUS DIFFERENCE BETWEEN THE RESULTS?

THE WITNESS: NO. THERE WAS NO SIGNIFICANT CHANGE IN THE RESULTS.

MR. MOORE: Q DR. VINCELL, DID YOU PLACE AN ORDER OR AN INSTRUCTION TO CONDUCT AN APPROPRIATE MULTIPLE REGRESSION ANALYSIS IN THIS CASE?

[Page 1203]

A DR. ACHEN REPORTER TO ME THAT INCLUDING EDUCATION IN THE REGRESSION MADE ESSENTIALLY NO DIFFERENCE ON ANY OF THE INDICATORS.

THE COURT: AND DID THAT HAVE ANY EFFECT ON THE OPINION WHICH YOU GAVE THIS COURT AS FAR AS YOUR OWN STUDY WAS CONCERNED?

THE WITNESS: NO. MY OWN CONCLUSIONS ARE BASED STRICTLY ON THE EVIDENCE THAT I USED.

THE COURT: OKAY.

MR. MOORE: Q NOW, DR. SPERLICH, YOU KNOW WHETHER OR NOT THERE WERE ANY -- STRIKE THAT.

YOU WERE ASKED QUESTIONS ABOUT WHETHER OR NOT REGRESSION RUNS WERE MADE WITH RESPECT TO SALARY LEVELS. IS THAT CORRECT?

A THAT IS RIGHT.

Q DO YOU HAVE ANY KNOWLEDGE AS TO WHY REGRESSION RUNS WERE NOT MADE WITH RESPECT TO EACH SALARY LEVEL?

A AS I UNDERSTAND IT, BECAUSE THE NUMBER OF CASES IN EACH --

MR. WALSH: THE SAME OBJECTION, YOUR HONOR, ON THE GROUNDS IT'S HEARSAY.

MR. MOORE: Q DID YOU AGAIN HAVE --

THE COURT: WELL THE THING -- HEARSAY IS ADMISSIBLE. I MEAN AN EXPERT WITNESS CAN RELY ON HEARSAY IN FORMING HIS OPINION THAT HE GIVES IN COURT. BUT YOU CAN'T HAVE A